

137 FERC ¶ 61,174  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Duke Energy Vermillion II, LLC  
Duke Energy Indiana, Inc.  
Wabash Valley Power Association, Inc.

Docket No. EC11-90-001

ORDER GRANTING CLARIFICATION AND DISMISSING  
REQUEST FOR REHEARING

(Issued November 30, 2011)

1. On September 2, 2011, Wabash Valley Power Association, Inc. (Wabash), an electric generation and transmission cooperative, filed a request for clarification or, in the alternative, rehearing of the Commission's August 12, 2011 order in this proceeding.<sup>1</sup> As discussed below, since the Commission is granting Wabash's request for clarification of the August 12 Order, its alternative request for rehearing is dismissed.

**I. Background**

2. On June 22, 2011, Duke Energy Vermillion II, LLC (DEV), Duke Energy Indiana (DEI) and Wabash (collectively, the Applicants) filed an application pursuant to section 203 of the Federal Power Act<sup>2</sup> requesting Commission authorization for DEV to sell to DEI and Wabash its undivided 75 percent ownership interest in the Vermillion generating facility, including associated interconnection facilities (Vermillion Transaction). On July 12, 2011, the Applicants filed an amendment to the application.

3. In the application, the Applicants asserted that the Vermillion Transaction would not have an adverse effect on rates charged to either wholesale customers or transmission

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<sup>1</sup> *Duke Energy Vermillion II, LLC*, 136 FERC ¶ 62,136 (2011) (August 12 Order).

<sup>2</sup> 16 U.S.C. § 824b (2006).

service customers.<sup>3</sup> With respect to wholesale power rates, Wabash stated that it makes sales to its member cooperatives that are also Wabash's owners. In this regard, Wabash noted that the Commission has determined that transactions, such as the Vermillion Transaction, will not adversely affect rates when the members/owners are also the ratepayers.<sup>4</sup> Wabash further asserted that it serves its members' wholesale power needs pursuant to a formula rate tariff and that no adjustments would be required.<sup>5</sup>

4. In the application, DEI committed for a five-year period from the closing of the Vermillion Transaction to hold harmless its wholesale requirements customers served at cost-based rates and its transmission customers from costs associated with the Vermillion Transaction, except to the extent DEI can demonstrate that the transaction-related savings are equal to or in excess of the transaction-related costs.<sup>6</sup>

5. Wabash agreed to a more limited hold harmless commitment by agreeing not to seek recovery of transaction-related costs for a period of five years through its transmission revenue requirement via its Midwest Independent Transmission System Operator, Inc. (MISO) Attachment O annual filing, except to the extent that it can demonstrate that the transaction-related savings are equal to or in excess of the transaction-related costs.<sup>7</sup> Although Wabash did not make a similar commitment to hold harmless wholesale power customers, it stated that the transaction would not have an adverse effect on rates based on the fact that sales are made to its members, which are both its owners and its ratepayers.

6. In the August 12 Order, the Commission approved the Vermillion Transaction, finding it consistent with the public interest, subject to certain conditions.

## **II. Request For Clarification**

7. In its request for clarification or rehearing, Wabash asks the Commission to clarify a paragraph in the August 12 Order which, according to Wabash, could be interpreted as

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<sup>3</sup> Duke Vermillion II, LLC Application, Docket No. EC11-90-000, at 27 (filed June 22, 2011).

<sup>4</sup> *Id.* at 28.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 29.

<sup>7</sup> *Id.* at 29-30.

obligating Wabash to make a section 203 and 205 compliance filing to seek recovery of transaction-related costs through its existing formula rate with respect to wholesale power sales to its members. The subject paragraph states as follows:

If Applicants seek to recover transaction-related costs through their wholesale power or transmission rates they must submit a compliance filing that details how they are satisfying the hold harmless requirement. If Applicants seek to recover transaction-related costs in an existing formula rate that allows for such recovery, then that compliance filing must be filed in the [Federal Power Act] section 205<sup>8</sup> docket in which the formula rate was approved by the Commission, as well as in the instant 203 docket. In this case the filing would be a compliance filing in both the section 203 and section 205 dockets. If Applicants seek to recover transaction related costs in a filing whereby they are proposing a *new* rate (either a new formula rate or a new stated rate), then that filing must be made in a *new* section 205 docket as well as in the instant 203 docket. In this case the filing would be a compliance filing in the section 203 docket, but a rate application in the section 205 docket. The Commission will notice such filings for public comment. In such filings, Applicants must: (1) specifically identify the transaction-related costs they are seeking to recover; and (2) demonstrate that those costs are exceeded by the savings produced by the transaction, in addition to any requirements associated with filings made under section 205.<sup>9</sup>

8. Wabash contends that the quoted paragraph is inconsistent with the hold harmless commitment that Wabash made in the application (which was limited to recovery of transaction-related costs from transmission service customers) and with the position the Commission has taken with respect to generation and transmission cooperatives, such as Wabash, and its members/owners, reiterating that the Commission has determined that transactions, such as the Vermillion Transaction, will not adversely affect wholesale rates when the members/owners are also the ratepayers.<sup>10</sup>

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<sup>8</sup> 16 U.S.C. § 824d (2006).

<sup>9</sup> August 12 Order, 136 FERC at 64,346.

<sup>10</sup> Request at 2.

### **III. Determination**

9. We grant Wabash's request for clarification of the April 12 Order. Our review of Wabash's proposal and the April 12 Order indicates that the quoted language correctly sets forth the filing obligation that would apply to Wabash should it seek to recover transaction-related costs through transmission rates. However, we agree that the quoted language could be interpreted as obligating Wabash to make a section 203 and 205 compliance filing to seek recovery of transaction-related costs through its existing wholesale power sales formula rate contracts with its member cooperatives. As a result, we clarify that Wabash is not subject to compliance obligations as set forth in the quoted language with regard to its wholesale power sales contracts with its member cooperatives. Because Wabash's members are both its owners and its ratepayers, any profits earned by Wabash will inure to the benefit of its ratepayers. As noted, Wabash states that it serves its members using wholesale rates set pursuant to a formula rate tariff and that no adjustment to rates will be required.

10. Accordingly, we clarify that the quoted paragraph, as applied to Wabash, should only apply to the recovery of transaction-related costs through its transmission rates.

#### The Commission orders:

Wabash's request for clarification is hereby granted as discussed above. Accordingly, its alternative request for rehearing is hereby dismissed.

By the Commission. Commissioner Spitzer is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.